

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)
Debtors.

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VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

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2 today, I don't remember what that set off
3 curve ball was but I was persuaded by my
4 own counsel that it was something
5 unfavorable to us and so I said it's out,
6 no value.

7 Q. At the time you sent your e-mail
8 at 10:05 on May 9th, did you understand
9 what setoff curve ball you were referring
10 to?

11 A. As I sit here today, I don't
12 remember. I confess I may very well not
13 have understood what I was talking about.

14 Q. Is it your testimony,
15 Mr. Devine, that you were sending e-mails
16 around at this point in the negotiations,
17 May 9th, 2012, without understanding what
18 it was you were talking about?

19 MR. BRYAN: Objection to form.
20 Argumentative. Misstates his
21 testimony.

22 A. What I mean to say is that it
23 occurs to me and appears to me based on
24 the cadence of these e-mails and the
25 timing, although frankly I don't -- I

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2 don't remember sitting here today what the
3 ultimate timing of a deal was, when hands
4 were shaken on final language. I'm kind
5 of eager to see where that -- where that
6 goes and where it ends. I wonder how
7 close we were at May 9th at 10:05. But I
8 will tell you that I was, I had a sense
9 that a deal was doable and I didn't want
10 anything getting in the way of the
11 essential deal as I had understood it to
12 take shape.

13 So if somebody told me at some
14 time before 10:05 on Wednesday, May 9th
15 somebody was throwing a curve ball setoff
16 or otherwise into the negotiations I may
17 well have taken the time to figure out
18 what they were talking about in
19 consultation with my counsel. If it was
20 too complicated or irrelevant to what my
21 self understood scope was, maybe I
22 listened and maybe I got half or more of
23 it. I did recognize it as a potential
24 obstacle of getting a deal done and so I
25 was not ready to allow it to become part

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2 of the conversation, at least from my
3 perspective in the deal.

4 Q. Mr. Devine, given what you have
5 claimed is your limited expertise, why
6 were you injecting yourself into the
7 discussion on these matters? Why didn't
8 you just let Mr. Schrock and Mr. Lee hash
9 it out?

10 MR. BRYAN: Objection as to
11 form.

12 A. I was driving a deal to
13 conclusion.

14 Q. What deal?

15 A. The deal that is represented in
16 gross by the resolution between the ResCap
17 estate and the RMBS claimants, both the
18 Kathy Patrick and Talcott Franklin in the
19 one sense and also the tripartite
20 agreement between Ally, the ResCap
21 entities and the claimants. And I thought
22 it was a good deal and I still to this day
23 think it's a good deal. And I saw that to
24 my mind anyway the essential elements of a
25 deal had been worked out that were

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2 favorable and fair to all concerned and I
3 wanted to get the deal done as I
4 understood we were on a certain timeline.

5 Q. Looking at the top e-mail in the
6 chain from Mr. Lee to yourself, among
7 others, at 10:54 a.m. on May 9th, did you
8 receive that e-mail?

9 A. It looks like I did, yes.

10 Q. And Mr. Lee wrote, "We will be
11 seeking ResCap board approval today. Does
12 Ally's board need to approve as it is
13 signing the PSA and ResCap is agreeing to
14 settle a claim in excess of 25 million,
15 which requires Ally approval under Ally's
16 governance framework. Please let us
17 know."

18 Did AFI's board need to approve?

19 A. I don't know.

20 Q. Did Mr. Lee, to your knowledge,
21 receive a response to his inquiry?

22 A. I don't know.

23 Q. Does Mr. Lee's reference to the
24 ResCap board -- his reference to seeking
25 ResCap board approval today, meaning

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2 May 9th, refresh your recollection of the
3 timeline in relation to the e-mails that
4 appear below that e-mail?

5 A. Yes, it does.

6 Q. In what way?

7 A. Well, it looks like that ResCap
8 or at least Gary Lee at that point
9 intended to bring the ResCap board, if I
10 understand correctly what he was referring
11 to, the RMBS -- proposed RMBS settlement
12 agreement and the PSA, on that day.

13 MR. KAUFMAN: Let's mark as the
14 next exhibit, which is 150 an e-mail
15 chain on May 9th and May 10th, 2012,
16 between Mr. Devine and Ms. Patrick.

17 (9019 Exhibit 150, e-mail chain
18 dated May 9th and May 10th, 2012,
19 marked for identification, as of this
20 date.)

21 A. Thank you.

22 Q. Directing your attention to the
23 e-mail at the bottom of the first page of
24 this exhibit, and continuing over to the
25 second page, which is an e-mail from

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2 THE VIDEOGRAPHER: The time is
3 4:57 p.m. and we are off the record.

4 (Whereupon, there is a recess in
5 the proceedings.)

6 THE VIDEOGRAPHER: The time is
7 5:06 p.m. and we are back on the
8 record.

9 Q. Before we --

10 MR. PRINCI: Before you continue
11 with your questions, Mr. Kaufman, I
12 just want to note for the record that
13 when you went off the record, you
14 berated me and you said I was a jerk.
15 I believe that your conduct is
16 contrary to the rules of our
17 profession and the rules of court and
18 I would ask you not to address me like
19 that again, please, sir.

20 Q. Okay. Before we broke,
21 Mr. Devine, we were focusing on your
22 e-mail at 1:55 a.m. on Thursday, May 10th.
23 Let me ask it to you this way in that
24 e-mail you said "The KP settlement is for
25 everything" -- and you underlined and

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italicized the word "everything" --
"except securities claims," do you see
that?

A. Yes, I do.

Q. So you were making clear in that
statement that the KP settlement and by
that I mean the RMBS Trust Settlement did
not include securities claims, right?

A. What I was saying was, it's my
understanding of from my perspective what
the proposed settlement in negotiation
represented was a release, the scope of
which was for everything except securities
claims. I wasn't trying to say what the
actual settlement was or wasn't, I was
stating what my understanding of the
settlement as it evolved as a proposed
negotiated settlement.

Q. By everything what did you
intend to encompass? What did you
understand was being released as part of
that settlement?

A. Any claim other than securities
claims that any signatory, any releasing

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2 party to the agreement has or may have at
3 any time up to and including the date of
4 the release.

5 Q. Did you intend to include within
6 the word "everything" claims that might be
7 asserted by any of the monolines?

8 A. My understanding at the time was
9 that the monolines would participate and
10 were contemplated to participate in the
11 settlement.

12 Q. But by May 10th the settlement
13 was already signed up, wasn't it?

14 MR. PRINCI: Objection as to
15 form.

16 A. I don't know.

17 Q. Okay. Let's put it this way.
18 You knew it had been approved by the
19 ResCap board, didn't you?

20 A. No.

21 Q. You didn't?

22 A. No.

23 Q. So when you said everything in
24 this e-mail, did you intend or not intend
25 to include a release by the monolines of

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2 their claims?

3 MR. BRYAN: Object to form. I

4 knew -- I certainly knew that the

5 monolines were not a signatory party

6 to the settlement. But it was my

7 understanding that the claims that

8 they would or could enunciate in

9 connection with the securities subject

10 of the settlement would be included

11 within the scope of the allowed claim.

12 Q. You said, "And we can define

13 securities claims narrowly." What do you

14 mean by that?

15 A. What I meant by securities

16 claims was claims brought by securities

17 holders on traditional federal securities

18 law or state blue sky or the closely

19 Allied state common law fraud claims that

20 would be characterized typically as a

21 securities based claim.

22 Q. A bit further down in your

23 e-mail you said "The circle is squared at

24 the plan. KP can only get us the

25 everything but securities settlement

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2 release because that is the full extent of
3 her representation. She has been clear
4 about that. Same as in her" BofA -- "B of
5 New York Mellon work, etc."

6 Do you see that?

7 A. Yes, I do see that.

8 Q. And then you said "But notice,
9 though her clients don't release
10 securities claims, they sign plan support
11 agreements and the plan includes very
12 simple comprehensive releases, which of
13 course include third-party release of all
14 claims which of course includes securities
15 claims. Presto. So while she can't
16 represent parties in giving up their
17 securities claims, clients face a choice,
18 either sign up with the settlement to make
19 sure your trust receives monies under the
20 waterfall in which case you need to sign
21 the plan support agreement and support the
22 plan. And the plan wipes out all their
23 claims of any sort. This is the beauty of
24 it."

25 Do you see that?

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2 going on at that time and I have no idea
3 whether there were any intervening e-mails
4 between me and Jamie that were responsive
5 to this one before I received this.

6 Q. Whatever, Mr. Devine, did you
7 receive the e-mail that Ms. Levitt sent at
8 1:16 a.m. on May 11th?

9 A. Looks like I did.

10 MR. KAUFMAN: Let's mark as
11 Exhibit 154 another e-mail chain, this
12 one on May 12, 2012.

13 (9019 Exhibit 154, e-mail chain
14 dated May 12, 2012, marked for
15 identification, as of this date.)

16 Q. Looking at the first e-mail in
17 the chain, which begins at the bottom of
18 the exhibit and continues over to the next
19 page. Did you send that e-mail to
20 Ms. Levitt, Mr. Lee, Mr. Ornstein and
21 Mr. Ruckdaschel at 4:22 p.m. on May 12th?

22 A. It looks like I did.

23 Q. The subject of your e-mail was
24 the question, "Has Talcott Franklin signed
25 on without reservation to support the

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2 plan, including broad third-party release
3 of all claims against Ally, etc.,
4 including securities claims." Right?

5 A. That's what the subject line is.

6 Q. And did you receive Mr. Lee's
7 e-mail at 4:26 p.m. in response to that
8 e-mail?

9 A. I see that Gary Lee sent an
10 e-mail to pretty much the same group of
11 people at 4:26.

12 Q. And you received that e-mail
13 from Mr. Lee, didn't you?

14 A. That's what it looks like.

15 Q. Okay. And Mr. Lee said, "It's
16 complicated." And that, "We sent Talcott
17 the agreement the way we wanted it and
18 told him he couldn't really negotiate it.
19 But if KP doesn't sign, I don't know if he
20 will."

21 Do you see that?

22 A. I see that that's part of what
23 his e-mail says.

24 Q. Right. And the e-mail at the
25 top is your reply to Mr. Lee, correct?

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2 A. Well, I sent an e-mail to Gary
3 Lee, Jamie Levitt, Noah Ornstein and John
4 Ruckdaschel, cc'd Cieri and Schrock at
5 4:29.

6 Q. Right. And you sent that e-mail
7 in response to Mr. Lee's e-mail at 4:26 on
8 May 12th, didn't you?

9 A. Yeah, I'm not sure if it's in
10 response but I did send him an e-mail a
11 couple minutes later.

12 Q. And you wrote, "Got it. Had
13 call with KP. We told her PSA support
14 whole hog is drop dead." That's what you
15 wrote, right?

16 A. That's what I wrote.

17 Q. And is that what you told
18 Ms. Patrick?

19 A. I don't remember if I told her
20 whole hog but if I read this sitting here
21 now, it looks like I was communicating to
22 that group that I told her that she had to
23 support the PSAs in full. And that that
24 was a provision that Ally would insist on
25 to the extent Ally could insist on

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2 anything.

3 Q. And by using the phrase "drop
4 dead" you meant it was nonnegotiable from
5 Ally's perspective, right?

6 A. I meant that if she wanted our
7 participation in the PSA she needed to
8 support it.

9 MR. KAUFMAN: Let's mark as the
10 next exhibit an e-mail chain on
11 May 13, 2012 between Mr. Devine and
12 Talcott Franklin.

13 (9019 Exhibit 155, e-mail chain
14 dated May 13, 2012 between Mr. Devine
15 and Talcott Franklin, marked for
16 identification, as of this date.)

17 A. Okay.

18 Q. Looking at the first e-mail in
19 this chain which starts at the bottom of
20 the first page, did you send that e-mail
21 to Mr. Franklin at 12:16 p.m. on
22 May 13th -- I'm sorry -- at 1:28 p.m. on
23 May 12th?

24 A. It looks like I did. Again, I'm
25 not sure of the timing but it looks like I

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2 did.

3 Q. And Mr. Franklin responded for
4 you to call him, correct?

5 A. Yes. That looks right.

6 Q. And then you wrote back to
7 Mr. Franklin saying "I can try to call you
8 but on phone now with CEO and making range
9 of final decisions before 1:00 p.m. board
10 meeting. I can't expose Ally to any
11 claims however remote."

12 That's what you wrote, correct?

13 A. That's what that e-mail says.

14 Q. And were you referring to Mike
15 Carpenter when you referred to being on
16 the phone with the CEO?

17 A. I probably was, yeah.

18 Q. And were you referring to an AFI
19 board meeting in that e-mail?

20 A. I don't recall but that would --
21 that would make sense.

22 Q. When you said that you couldn't
23 expose Ally to any claims however remote,
24 what did you mean?

25 A. I just wanted to note on the

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2 timing here, I think my testimony was
3 probably incorrect earlier if I testified
4 that my e-mail to Talcott was at 1:28 p.m.
5 That might be an indication of his time
6 zone and not mine. Because if you see the
7 e-mail up the chain was sent Sunday at
8 12:35 p.m. I'm just not sure of the
9 timing. But inside that note, inside my
10 note to Talcott it says I can try to call
11 you but I'm on the phone right now with
12 CEO making range of final decisions before
13 1:00 p.m. board meeting. So I'm assuming
14 that the 12:35 was my time zone and that
15 the 1:00 p.m. was my time zone.

16 Q. In any event, Mr. Devine, when
17 you said you couldn't expose Ally to any
18 claims however remote, what did you mean?

19 A. So basically as I recall, and
20 there were a lot of moving parts at this
21 time, there were a lot of settlements
22 going on, there were a lot of
23 conversations but if I recall correctly,
24 the question was whether or not Talcott
25 Franklin could logistically accomplish

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2 copy of Exhibit 58, a document that had
3 been previously marked. And right now on
4 the screen is Article 7 releases. Do you
5 see that on the screen?

6 A. I see Article 7 releases on the
7 screen. It's not the complete section
8 7.01 but there's a certain amount of 7.01
9 up there.

10 Q. Well, as you read can we scroll
11 up and when you're done reading --

12 A. What's the question, please, so
13 I'll know what to read?

14 Q. What is your understanding, the
15 scope of the release as it relates to the
16 monolines claims?

17 MR. BRYAN: Objection to form.

18 MR. PRINCI: Objection as to
19 form.

20 A. If you are asking me what is my
21 impression and understanding of what the
22 language in this contract means, I'm
23 struggling to find a way to answer that
24 without violating the province of my
25 client's attorney-client privilege.

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2 Q. So are you saying to me, sir,
3 that you told Ally what your understanding
4 of Article 7 is in the document that was
5 or the agreement entered between the
6 debtors and Ms. Patrick, is that the
7 nature or the basis, rather, for your
8 assertion of the privilege?

9 A. That's part of it.

10 Q. Okay. I don't want to know what
11 you told Ally. I want to understand your
12 understanding of this provision.

13 MR. BRYAN: Objection to form.

14 A. And so I'm trying to work with
15 you because I know you are not asking me
16 to violate the attorney-client privilege.

17 Q. I would not ask you to do that,
18 sir.

19 A. And so -- so that I understand
20 your question better in good faith, you
21 are asking me to comment on either a
22 present draft or a historical draft of an
23 agreement that has not been approved yet
24 and the nature of the scope of one of the
25 negotiated terms in -- in my capacity as

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2 an attorney for Ally Financial?

3 Q. Yes.

4 A. And that's going to -- that's
5 going to reveal attorney-client privilege
6 communications.

7 Q. We reserve the rights --

8 MR. JURGENS: Are you
9 instructing the witness not to answer
10 the question?

11 MR. BRYAN: The witness answered
12 your question.

13 MR. JURGENS: Are you
14 instructing the witness not to answer?

15 MR. BRYAN: I instructed the
16 witness not to answer to the extent it
17 would reveal attorney-client
18 communications.

19 Q. And, Mr. Devine, you are
20 following that instruction?

21 A. Yes.

22 Q. Have you discussed the scope of
23 the release as it relates to the monolines
24 claims with anyone other than your client
25 and your outside counsel?

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2 A. Yes.

3 Q. With whom have you discussed the
4 scope of the release with?

5 A. I believe I have discussed those
6 terms with the parties to the agreement.

7 Q. And what were your discussions
8 with respect to the scope of the releases
9 as it relates to the monolines claims with
10 those parties?

11 A. I can't speak about that with
12 regard to the settlement that's currently
13 subject to the hearing that's coming up.
14 But as I recall in the negotiation I
15 indicated to the parties that it would be
16 my understanding that the monolines would
17 participate in the allowed claim that is
18 the subject of one term of that agreement.

19 Q. And when you say participate in
20 the allowed claim, what do you mean by
21 that?

22 A. That they would have cognizable
23 claims within the disbursement of whatever
24 funds were allocated to that allowed claim
25 for distribution.

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2 Q. Was it your understanding
3 that -- let me withdraw that.

4 What was your understanding of
5 what would happen if the trusts in the
6 deals wrapped by the monolines didn't opt
7 into the settlement?

8 A. Are you asking me what sort of
9 scenario might ensue if after the parties
10 to the agreements agreed to them and they
11 were presented, at least those requiring
12 court an approval were presented to the
13 court for approval and were not approved?

14 Q. No.

15 A. Okay, sorry.

16 Q. Let's just cut to the chase.
17 There's two possibilities with respect to
18 the trusts in the deals that were wrapped,
19 right, either -- either those trusts will
20 opt in to the proposed settlement or the
21 trusts will opt out, right? Are there any
22 other options that I'm missing?

23 A. I suppose there's any other
24 number of negotiated options between
25 those.

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2 Q. But under the terms of
3 settlement agreement the trusts are
4 presented with the option to opt in or opt
5 out, right?

6 A. Well, I can't profess to have an
7 encyclopedic memory of what terms, what
8 the terms in the agreement indicate with
9 regard to the options that the trusts
10 faced. I just don't.

11 Q. Let's go back to your
12 understanding of the monolines for a
13 second. As you sit here today, are you
14 aware of anything in the agreement that
15 would carve the monolines claims out of
16 the scope of the settlement agreement that
17 was reached between the debtors and
18 Ms. Patrick?

19 A. I'm not aware of anything that
20 would carve the monolines claims out of
21 the \$8.7 billion allowed claim.

22 MR. JURGENS: Let's scroll to --
23 we have a hard copy now. That's
24 wonderful. So we don't have to
25 scroll.